

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Part 2 of the Commission's)	
Rules to Allocate Spectrum Below 3 GHz for)	ET Docket No. 00-258
Mobile and Fixed Services to Support the)	
Introduction of New Advanced Wireless)	
Services, including Third Generation Wireless)	
Systems)	
)	

**REPLY COMMENTS OF THE
PCIA, THE WIRELESS INFRASTRUCTURE ASSOCIATION**

PCIA, the Wireless Infrastructure Association ("PCIA"), submits this reply to comments filed on the Federal Communications Commission's Eighth Report and Order, Fifth Notice of Proposed Rule Making and Order in the above-captioned docket.¹ PCIA's prior comments in this docket supported the proposal to adapt the 1.9 GHz broadband Personal Communications Service ("PCS") framework for clearing microwave incumbents to the new spectrum for Advanced Wireless Services ("AWS") in the 2.1 GHz band, including specifically the creation of an industry clearinghouse to manage cost-sharing.² As noted in those comments, PCIA operated the PCIA Microwave Clearinghouse ("MWCH"), which was the FCC-designated cost-sharing clearinghouse³ responsible for administering nearly all of the cost-sharing that occurred in the

¹ Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, *Eighth Report and Order, Fifth Notice of Proposed Rule Making and Order*, ET Docket No. 00-258 (Sept. 29, 2005) ("*5th NPRM*").

² Comments of PCIA, The Wireless Infrastructure Association, ET Docket No. 00-258 (filed Nov. 25, 2005) ("*PCIA Comments*").

³ See Amendment of the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, WT Docket No. 95-157, Memorandum Opinion and Order, 11 FCC Rcd 9394 (1996).

1.9 GHz PCS band. Based on the record in this proceeding, PCIA believes there is broad support for the proposed relocation framework and the specific adaptations necessary to adjust for the existing incumbent use of the 2.1 GHz band.

As PCIA and others have observed, the spectrum environment at 2.1 GHz is different and more challenging than the 1.9 GHz *Emerging Technologies* (“ET”) band. Specifically, there are a larger number of microwave links present, the microwave bands do not maintain transmit/receive separation that is congruent with the new entrants’ licenses, only half of the band microwave band will be licensed to new entrants in the near term, and the Broadband Radio Service (“BRS”) incumbents at the high end of the AWS band utilize a different architecture than the point-to-point systems at 1.9 GHz. PCIA and other commenters expressed the same core view that the processes developed for the 1.9 GHz band, including the use of a cost-sharing clearinghouse, could and should be adopted for the 2.1 GHz band and can meet the same core goals of rapidly transitioning the use of the spectrum without undue inconvenience or cost to the incumbent users.⁴

In such respects, TMI/Terrestar’s comments largely concerned one of those issues, the adaptation of the process and procedures to compensate for the use of one-half of the microwave band for mobile satellite services (“MSS”), including ancillary terrestrial components (“ATC”).⁵ While this should be relatively straightforward,⁶ TMI/Terrestar attempts to create a non-parallel

⁴ See, e.g., Comments of Verizon Wireless, ET Docket No. 00-258 (filed Nov. 23, 2005) (“*Verizon Wireless Comments*”) at 2-3; Comments of T-Mobile USA, Inc., ET Docket No. 00-258 (filed Nov. 25, 2005) (“*T-Mobile Comments*”) at 2, 4.

⁵ Comments of TMI and Terrestar, ET Docket No. 00-258 (filed Nov. 23, 2005) (“*TMI/Terrestar Comments*”).

⁶ PCIA does note, however, that there are statements in the *TMI/Terrestar Comments* that appear to misunderstand the procedures used at 1.9 GHz. First, TMI/Terrestar states that “[t]he clearinghouse option should remain voluntary ... [and] MSS operators should retain the right to negotiate their own agreements for reimbursement with any AWS licensee.” *TMI/Terrestar Comments* at 1. While PCIA agrees that TMI/Terrestar should have the right to negotiate alternative arrangements with AWS licensees or other incumbents, on par with any other new entrant, participation

regime that does not appear to meet the FCC’s policy goals. Under the existing rule in Part 101, later entrant ET licensees are required to contribute 50 percent of the cost of relocating a microwave link to a prior ET licensee who has relocated that link if the later entrant would have interfered with that link.⁷ TMI/Terrestar, for its part, seeks to interpret this rule to provide that any AWS licensee that is located in the proximity box should be deemed to interfere with the link, although MSS licensees would use an “actual interference” standard.⁸

PCIA strongly disagrees with disproportionate impact of TMI/Terrestar’s proposal. If AWS licensees are held to a “bright line” proximity threshold test box standard with respect to cost-sharing with MSS/ATC licensees, MSS/ATC licensees should be held to the same standard. Because, as PCIA has previously noted, one of the greatest contributors to the success of the prior cost-sharing regime was the use of “bright line” tests, PCIA believes that the proximity threshold test box should apply to both AWS licensees and ATC operators.⁹ PCIA also believes that the existing Part 101 rule should be revised to permit cost-sharing for self-relocated microwave links. Under the rules, Part 101 licensees may self-relocate and obtain reimbursement if the link is triggered by an ET licensee. Under Part 101, as presently drafted,

in the clearinghouse through filing PCN data should be required. The task of a clearinghouse is to identify cost-sharing as between licensees, identify the amounts registered with the clearinghouse for link relocation, and apply set formulas in the rules for depreciation and sharing. MSS licensees, like others, should be free to negotiate alternative arrangements, but that does not obviate the need to file data with the clearinghouse to accurately track sharing obligations as they relate to third parties. TMI/Terrestar also requests that MSS operators “should ... also be granted the same oversight and/or participation right in the clearinghouse as AWS licensees.” *Id.* at 7. However, neither AWS nor any other entity is “granted” “oversight” rights; that would violate the principle of neutrality upon which the clearinghouse is supposed to be founded. While PCIA anticipates a technical advisory body that includes AWS licensees, microwave fixed service licensees, BRS licensees, and MSS operators, the Commission should not delegate any “oversight” rights if it seeks neutrality.

⁷ 47 C.F.R. §101.82.

⁸ *TMI/Terrestar Comments* at 4 n.9, 6.

⁹ Given that ATC deployment will be functionally similar to AWS deployments, no reason exists to differentiate as between the two for triggering purposes. For initiation of MSS operations, all co-channel microwave links previously relocated should be triggered.

the ability of an ET licensee to obtain cost-sharing from later entrants for self-relocated links is unclear and should be made explicit.

By far the most contentious issue raised by commenters relates to the relocation of BRS in the AWS band.¹⁰ In some respects, this vociferous debate underscores the need, as previously noted by PCIA, for clarity in the rules and unambiguous, straight forward criteria for assessing reimbursement and cost-sharing. Regardless of whether the FCC adopts a model that closely aligns with the 1.9 GHz relocation, or provides additional protection for incumbents or relocators, the rules must strive to eliminate potential. Only then will AWS licensees be able to accurately predict the financial ramifications of BRS clearing in their pre-auction strategic planning. The Commission's dual policy goals of a rapid transition with minimal impact on incumbent users. Thus, PCIA urges the Commission, in resolving the BRS relocation issues, to apply bright line tests to achieve the best and most efficient transition practicable.

PCIA further believes that application of the cost-sharing model to BRS relocation, including the use of a clearinghouse, will be necessary. BRS channel 1 overlaps not only the F Block of AWS spectrum, but also new AWS spectrum at 2155-2180 MHz that has yet to be channelized. Ultimately, however, the spectrum at 2155-2180 will be licensed to new entrants, and such entrants will benefit from relocations conducted by F Block AWS licensees. Moreover, existing BRS facilities may cross market boundaries and thus implicate geographic sharing. While the existing AWS F Block uses Regional Economic Area Groupings, which may result in minimal market overlaps, it is unclear what license regions would be used for the upper AWS band, which may require significantly more cost-sharing activity. Accordingly, PCIA suggests

¹⁰ *Cmp, e.g., Verizon Wireless Comments*; Comments of the Wireless Communications Ass'n Int'l, Inc. ET Docket No. 00-258 (filed Nov. 25, 2005); Comments of BellSouth Corporation, BellSouth Wireless Cable, Inc. and South Florida Television, Inc., ET Docket No. 00-258 (filed Nov. 23, 2005).

use of a cost-sharing clearinghouse from the outset to track relocation and deployment of facilities in the BRS spectrum, as well as rules clarifying how cost-sharing between lower band AWS licensees and upper band AWS licensees should be managed.¹¹

PCIA, and others, also noted that the rules governing relocation and cost-sharing in the 2.1 GHz band should be based on the past experience at 1.9 GHz, including specific support for a clearinghouse, but that the rules at 2.1 GHz should also incorporate the benefit of experience. In particular, there was record support for the adoption of a number of reforms proposed by PCIA. Specifically, the FCC should:

- Develop an expedited procedure for issuing declaratory rulings and/or policy interpretations of the clearing rules to avoid lengthy disputes.¹² In the cost-sharing context, disputes often impact more licensees than the parties to the disagreement. Having a rapid process for addressing rule interpretations would significantly reduce disputes and delays in cost-sharing situations, as well as making sure all parties fully comprehend the ground rules for such payments. Similarly, PCIA believes that the FCC should create a dispute resolution process and make explicit in the rules its authority to order the payment of a cost-sharing amount from one entity to another.¹³
- Adopt a rule requiring licensees to file site data with the clearinghouse within 30 days of turning on any fixed base station at commercial power.¹⁴ As PCIA and others have noted, the lack of an explicit requirement to file PCN data lead some licensees at 1.9 GHz to believe no filings were necessary when, in fact, the carrier's sites were within the proximity threshold test box. The FCC should require that PCN data must be filed for all sites.

¹¹ For example, in some cases the FCC has used a pro rata approach based on the degree of overlap between new users—this would dictate lower band AWS licensees paying 5/6ths the relocation costs of BRS channel 1 and upper band licensees paying 1/6th, since lower band AWS overlaps with 2150-2155 MHz and upper band AWS overlaps only with 2155-2156 MHz. On the other hand, in the 1.9 GHz band, the FCC took the position that any overlap was sufficient to confer benefit, and therefore any co-channel licensee was obligated to pay an equal share of the costs, regardless of the degree of overlap.

¹² *T-Mobile Comments* at 5.

¹³ *Id.*

¹⁴ *Id.* at 6.

- Adopt a rule stating that each AWS licensee may trigger a cost-sharing requirement for a relocated link once per license, regardless of the size of the license.¹⁵
- Adopt a rule stating that, once triggered, deconstruction of a site does not relieve an entity of cost-sharing requirements.
- Clarify that if a new entrant operates in a manner protecting an existing incumbent and the incumbent is then relocated, the pre-existing new entrant still benefits from the relocation and cost-sharing is appropriate.¹⁶
- Eliminate the 10-day rule¹⁷ for filing link registrations by relocators.¹⁸
- Clarify that, in cases of bankruptcy or disputes, subsequent triggers may reduce their liabilities to other cost-sharing participants by “paying around” a prior trigger.
- Provide guidance on what constitutes good faith in cost-sharing.¹⁹ Specifically, the FCC should state that good faith negotiations require like evidence to rebut cost-sharing claims. In other words, if a line item cost-sharing breakdown has been provided by a relocation, an entity contesting those costs should be required to provide a line item breakdown of costs as well. If a relocater has a third-party estimate, those costs should not be contested in the absence of a third-party estimate by the subsequent trigger.
- Clarify that a rational division of non-link specific costs among several links relocated under a single contract is not prohibited cost averaging.²⁰
- Clarify that documentation does not extend to requiring submission of receipts or proof of expenditures by the relocatee; indeed, relocatees should be permitted to utilize the proceeds of relocation as they see fit.²¹ In a number of cases at 1.9 GHz, relocators negotiated relocation contracts with microwave incumbents in good faith, allocating the contract costs, less any relocation premium, among the various cost categories for relocations. Notwithstanding that a relocater has no ability to police the expenditure of funds by a relocatee, subsequent triggers often demanded proof

¹⁵ *Id.* at 5.

¹⁶ *Id.*

¹⁷ *See* §24.245(a)

¹⁸ *T-Mobile Comments* at 6.

¹⁹ *Id.* at 8.

²⁰ *Id.*

²¹ *Id.* at 7-8.

that the link had been relocated and receipts from the relocatee as to the actual costs of relocation.

- Clarify that relocatees should be permitted to acquire facilities on their own—indeed, the FCC encouraged the move to alternative transport—and that, in such cases, the relocation contract itself is the only documentation necessary to support a cost-sharing claim.²²

In sum, PCIA believes that the clearinghouse concept has been extraordinarily successful for broadband PCS incumbent microwave relocation cost-sharing, and that this model should be applied to AWS relocations. Given the large number of sharing participants, the complex reimbursement scenarios, and the overwhelming success of the PCIA MWCH, PCIA believes the model is one that should be applied again and, in fact, is the only practical means for ensuring a rapid and efficient transition of 2.1 GHz band use.

Respectfully submitted,

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²² *Id.* at 8.